

U.S. Patent Application No. 09/761,561  
Response to Office Action Dated August 26, 2004  
Amendment Dated November 26, 2004

### **REMARKS/ARGUMENTS**

The amendments to the claims are editorial in nature or further define what the applicants regard as the invention. Full support for the amendment can be found throughout the present application, for instance, at pages 1, 6, 10-12, and 22 of the present application. Accordingly, no questions of new matter should arise and entry of the amendment is respectfully requested. The applicants do note that the claim status for claim 7 was incorrect in the Amendment filed June 2, 2004. The claim is pending and has been corrected to read "(previously presented)".

#### **Objection to claims 24, 25 and 27**

Claims 24, 25 and 27 were objected to under 37 CFR 1.75(c) as being in improper form as a multiple dependent claim. In response, claims 24, 25 and 27 are amended so that they are not multiple dependent claims. Accordingly, this rejection should be withdrawn.

#### **Rejection of claims 1 - 4, 7 - 16, 18 - 27, 29 and 30 under 35 U.S.C. §112, first paragraph**

Claims 1 - 4, 7 - 16, 18 - 27, 29 and 30 were rejected under 35 U.S.C. §112, first paragraph, on the alleged grounds that the specification, while being enabled for metal amino acid complexes that can be formed at a pH of 2 or less, is not enabled for amino acids that do not form a complex at pH of 2 or less.

In response, claims 1, 9, 13, 16, 21, 23 and 26 are amended to provide that the amino acid is selected as forming a complex with a metal at a pH of 2 or less. This amendment is supported, for example, on pages 6 and 7 of the specification. Accordingly, the amended claims do not require that a person skilled in the art try to form a complex with a metal at a pH of 2 or less with an amino acid that does not form a complex with the metal at a pH of 2 or less. It is respectfully

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submitted that determining whether an amino acid forms a complex with a microbicidal metal is easily accomplished by persons skilled in the art without undue experimentation, since the only experimentation that would be required would be to bring the metal and the amino acid together at the indicated pH and determine whether a complex is formed. Since the Examiner has indicated that the specification is enabling for metal-amino acid complexes that can be formed at a pH of 2 or less, the amended claims 1 - 4, 7 - 16, 18 - 27, 29 and 30 are therefore clearly enabled. The rejection is thereby overcome and should be withdrawn.

**Rejection of claims 2, 12 - 16, and 18 - 28 under 35 U.S.C. §112, second paragraph**

Claims 2, 12 - 16, and 18 - 28 were rejected under 35 U.S.C. §112, second paragraph. Although the Examiner does not clearly express the exact grounds of rejection, the Examiner seems to be concerned that some claims refer to the complex as being a solid whereas other claims mention a solution.

In response, claim 2 is amended to provide that the microbicidal formulation is mixed with an aqueous solution. This amendment is supported, for example on page 5, lines 9 - 10 of the present specification. Further, claim 12 is amended to provide that the microbicidal formulation is mixed with the solution in a specified concentration range. The limitation in claims 2 and 12 that the microbicidal formulation is mixed with a solution is not inconsistent with the microbicidal formulation being a solid in claim 1. Accordingly, the rejection is overcome with respect to claims 2 and 12 and should be withdrawn.

The rejection with respect to claim 13 is respectfully traversed. Claim 13 is an independent claim directed to a method of preparing a microbicidal formulation. Claim 13 does not specify that the metal complex is a solid and therefore recitation of steps of dissolving a

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metal in an aqueous source and adding the organic chelating compound to form the metal complex is not internally inconsistent. Accordingly, the rejection with respect to claim 13 should be withdrawn.

The rejection with respect to claims 14 - 15 is respectfully traversed. Claims 14 and 15 depend from claim 1 and further define the disinfectant that is contained in the formulation. As provided in claim 1, the complex is in solid form in the formulation. It is respectfully submitted that persons skilled in the art would understand that a solid component can be combined with other components and remain in solid form. Accordingly, claims 14 and 15 are not inconsistent with claim 1. Accordingly, the rejection with respect to claims 14 and 15 should be withdrawn.

The rejection with respect to claims 16 and 18 - 22 is respectfully traversed. Claims 16 and 18 - 22 are directed to a microbicidal formulation. Claims 16 and 18 - 22 do not specify that the metal complex contained in the formulation is a solid, but do not contain any recitation that is inconsistent with the metal complex being a solid. Accordingly, the rejection with respect to claims 16 and 18 - 22 should be withdrawn.

The rejection with respect to claims 23 - 27 is respectfully traversed. Claims 23 - 27 are directed to methods of treating or preserving plants or flowers by treating the flowers or plants with a microbicidal formulation. Claims 23 - 27 do not specify that the metal complex is a solid, but do not contain any recitation that is inconsistent with the metal complex being a solid. In particular, claims 24 and 25 are amended to provide that the formulation is mixed with an aqueous solution, which recitation is not inconsistent with the metal complex being a solid. Accordingly, the rejection with respect to claims 23 - 27 should be withdrawn.

The rejection with respect to claim 28 is respectfully traversed. Claim 28 recites a specific formulation of defined properties. Claim 28 does not contain any recitation that is inconsistent

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with the formulation being a solid. Accordingly, the rejection with respect to claim 28 should be withdrawn.

Since the rejection under 35 U.S.C. §112, second paragraph, is clearly overcome with respect to each of the claims to which it has been applied, the rejection should be withdrawn.

**Rejection of claim 13 under 35 U.S.C. §102(b) or 35 U.S.C. §103 (a) over Poddymov et al or Sanchez et al.**

Claim 13 was rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103 (a) as obvious over Poddymov et al or Sanchez et al. The Examiner alleges that Poddymov et al. and Sanchez et al. teach a method of chelating silver with amino acids in acidic conditions at room temperature.

In response, claim 13 is amended to recite a method of preparing a microbicidal formulation comprising at least one disinfectant and a metal-amino acid complex. Neither Poddymov et al. nor Sanchez et al. teach or suggest any microcidal use for their compositions. Accordingly, neither Poddymov et al. nor Sanchez et al. provide any motivation for combining their compositions with a disinfectant, as required by amended claim 13. Accordingly, the rejection of claim 13 over Poddymov et al. and Sanchez et al. is thereby overcome.

Accordingly, the claims of the present application are in condition for allowance.

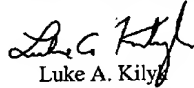
**CONCLUSION**

If there are any other fees due in connection with the filing of this response, please charge the fees to Deposit Account No. 50-0925. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged

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Respectfully submitted,



Luke A. Kilyk  
Registration No. 33,251

Attorney Docket No. 3731-002  
KILYK & BOWERSOX, P.L.L.C.  
53 A East Lee Street  
Warrenton, VA 20186  
Tel.: (540) 428-1701  
Fax: (540) 428-1720